



Legal Aspects of ASAP

- Admissible Evidence
- Limited Use Policy
- Separations
- DUI
- Getting it Right



Admissible Evidence

- Urinalysis is a search/seizure under the 4th Amendment to U.S. Constitution
 - ★ Therefore, evidence obtained is inadmissible unless based upon:
 - Probable Cause
 - Consent
 - Inspection



Admissible Evidence

- Probable Cause. (MRE 315): exists when there is a reasonable belief that the evidence sought is located in the person to be searched.
- Consent = no coercion.
- Inspection = Random or Unit inspection OR IAW policy memo; with the primary purpose to ensure fitness for duty NOT to find evidence of crime.



Limited Use Policy

- Limited Use Evidence Can't Be:
 - ★ Used for Court Martial Proceedings
 - ★ Used for Characterization of Service in Admin Sep Actions
- Limits Characterization of Service to Honorable



Limited Use Policy

- Results of a command-directed biochemical testing that is inadmissible under the Military Rules of Evidence.
- Safety mishap investigation
- Emergency medical care solely for overdose
- Self referral to the ASAP
- Admissions as part of their initial entry into the ASAP
- Voluntarily submits to a treatment program before the soldier has received a test order
- Test administered solely as a required part of rehabilitation



Limited Use Policy

- Limited use is automatic, BUT
- Does not protect disclosure of:
 - ★ illegal acts which may compromise or have an adverse impact on mission, national security, or the health and welfare of others, nor
 - ★ information that the client presently possesses illegal drugs or that the client committed an offense while under the influence of alcohol or illegal drugs.



Separations

- Chapter 9: Rehab Failures
 - ★ Limited to Honorable Characterization
 - ★ Soldiers “In Program” should be regularly tested. These tests are “limited use” and should be basis for Chap. 9. They can’t be basis of Chapter 14.
- Chapter 14: Serious or Patterns of Misconduct
 - ★ Applies to ALL Soldiers (Initiate for ANY drug use).
 - ★ An administrative separation action will be initiated and processed to the separation authority for decision of soldiers involved in two serious incidents of alcohol related misconduct in a year, such as more than one instance of drunk on duty or operating a motor vehicle while intoxicated.



DUI



- Suspension of Privileges
- Limited Hearing
- Revocation
 - ★ Restricted Privileges
- Referral to ASAP
- GOMOR
- Other Administrative Actions